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Austin, Texas 78701

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Al Axe  
direct dial: 512.370.2806  
aaxe@winstead.com

December 7, 2009

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Ms. Dolores Jean McGinnes  
413 Fieldcreek Dr  
Friendswood, TX 77546

Re: San Jacinto River Waste Pits Site (the "Site")

Dear Ms. McGinnes:

We represent McGinnes Industrial Maintenance Corporation ("MIMC") with respect to the above-referenced Site, which is located at the intersection of Interstate Highway 10 and the San Jacinto River, east of the City of Houston. This letter is to inform you that the Site has been identified by the U.S. Environmental Protection Agency ("EPA") as a Superfund site that must undergo an environmental cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et. seq.* Enclosed for your convenience is a summary published by the EPA regarding the Site.

According to the Harris County Clerk Land Records, the current owner of record of the Site is listed as Virgil C. McGinnes, Trustee. It is our understanding that Mr. McGinnes is deceased. Based on review of Mr. McGinnes' probate information, as well as that of Mrs. Ruby McGinnes, Mr. Lawrence P. McGinnes, and Ms. Billie Doris Gladfelter, it appears that you are an heir with a current ownership interest in the Site. Other heirs are Gary Gladfelter, Tanya Gladfelter Ammons, Tammy Kim McGinnes Idoux, and Holly Dawn McGinnes Boate.

The EPA has identified MIMC and International Paper Company ("IPC") as potentially responsible parties ("PRPs") for the cleanup of the Site and has issued a Unilateral Administrative Order ("UAO") to MIMC and IPC to conduct a Remedial Investigation/Feasibility Study ("RI/FS") for the Site, a copy of which will be provided upon request. The UAO requires that MIMC and IPC, among other things, use their best efforts to obtain access agreements from the present owners of property that will have to be accessed to conduct the RI/FS by December 20, 2009.

The EPA has also sent to MIMC and IPC a proposed Administrative Order on Consent ("AOC") to conduct a short term removal action to stabilize the Site. The AOC also contains a

Ms. Dolores J. McGinnes  
December 7, 2009  
Page 2

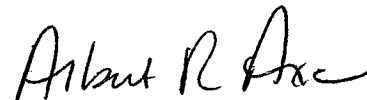
requirement that MIMC and IPC use their best efforts to obtain a signed access agreement from the current owners of the Site.

In pursuit of this access required by the UAO and AOC, we would like an opportunity to visit with you and the other McGinnes heirs to discuss potential steps to address the Site. We have also included for your review and signature an Access Agreement to memorialize your consent to access to the Site by MIMC, IPC, and EPA for the purposes stated herein.

In light of the deadline imposed by the EPA's UAO, we request that you contact me at 512-370-2806 or email me at [aaxe@winstead.com](mailto:aaxe@winstead.com) no later than seven (7) days after receipt of this letter to coordinate a time for us to meet and to ask any questions that you may have regarding this matter. If you wish to also contact someone with the EPA, you may contact either Ms. Barbara Nann at 214-665-2157 or [nann.barbara@epa.gov](mailto:nann.barbara@epa.gov) or Mr. Stephen Tzhone at 214-665-8409 or [tzhone.stephen@epa.gov](mailto:tzhone.stephen@epa.gov).

Thank you for your time. Please feel free to call me if you have any questions regarding this matter.

Very truly yours,

A handwritten signature in black ink that reads "Albert R. Axe". The signature is written in a cursive style with a large, stylized "A" and "X".

Albert R. Axe, Jr.

Ms. Dolores J. McGinnes  
December 7, 2009  
Page 3

AA:jtf  
Enclosures

cc: Mr. Francis E. Chin  
MIMC  
1001 Fannin Street, Suite 4000  
Houston, Texas 77002

Mr. John F. Cermak, Jr.  
Baker Hostetler  
12100 Wilshire Boulevard  
15th Floor  
Los Angeles, CA 90025-7120

Ms. Barbara Nann  
U.S. EPA, Region 6  
Office of Regional Counsel  
Superfund Branch (6RC-S)  
1445 Ross Avenue  
Dallas, TX 75202-2733

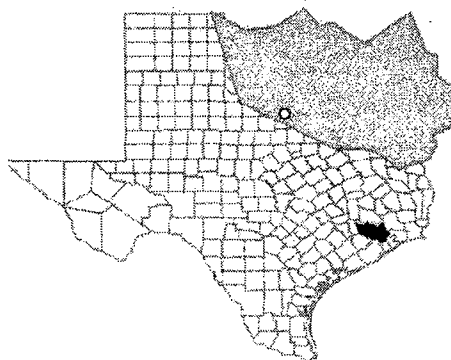
Mr. Stephen Tzhone  
U.S. EPA, Region 6  
1445 Ross Avenue  
Suite 1200  
Mail Code: 6SF-RA  
Dallas, TX 75202-2733

## **SAN JACINTO RIVER WASTE PITS**

### **Harris County, Texas**

EPA Region 6  
EPA ID# TXN000606611  
Site ID: 0606611

Contact: Stephen Tzhone, (214) 665-8409  
State Congressional District: 2 and 29  
Updated: November 2009



### **Current Status**

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The EPA issued Special Notice Letters to International Paper Company (IPC) and McGinnes Industrial Maintenance Corporation (MIMC) on July 17, 2009, inviting them to formally negotiate an Administrative Order on Consent (AOC) to conduct a Remedial Investigation and Feasibility Study (RI/FS). Both IPC and MIMC responded to EPA's SNL on September 20, 2009. The EPA is reviewing and evaluating the offer from these Potentially Responsible Parties (PRPs).

In addition, due to the unique location of the site, the EPA, USACE, and TCEQ are working together to come up with watershed management solutions where dredging and/or construction activities may impact the RI/FS, as well as, future site cleanup. As of November 1, 2009, a permits evaluation process is in place for an area of concern around the Site. The public announcement of this process can be found on the following websites:

EPA: [www.epa.gov/region6/6sf/texas/san\\_jacinto/tx\\_san\\_jacinto\\_public\\_announcement\\_20091021.pdf](http://www.epa.gov/region6/6sf/texas/san_jacinto/tx_san_jacinto_public_announcement_20091021.pdf)

USACE: [www.swg.usace.army.mil/pao/Docs/SanJacinto.pdf](http://www.swg.usace.army.mil/pao/Docs/SanJacinto.pdf)

TCEQ: [www.tceq.state.tx.us/remediation/superfund/epa/sanjacpits](http://www.tceq.state.tx.us/remediation/superfund/epa/sanjacpits)

### **Benefits**

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The site has been finalized on the National Priorities List.

### **National Priorities Listing (NPL) History**

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Proposal Date: 9/17/2007 (72 FR 53509)

Final Listing Date: 3/19/2008 (73 FR 14719)

### **Site Description**

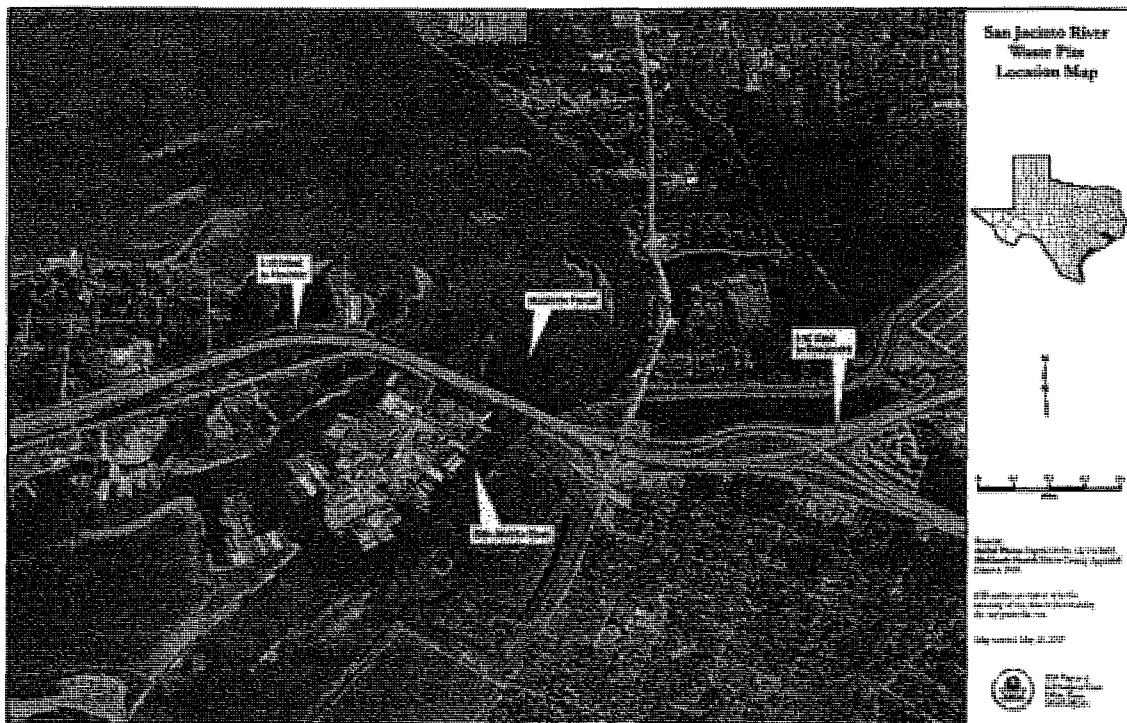
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**Location:** The Site is in Harris County in the State of Texas. The Site itself has no specific street address. The Site is comprised of an area of land and an area of the San Jacinto River bottom, i.e., river sediment that is contaminated with certain hazardous materials from released waste paper mill sludge. The Site is located in an area where the Interstate Highway 10 Bridge crosses over the San Jacinto River. The Site is located east of the City of Houston between two unincorporated areas known as Channelview and Highlands.

The Site includes an abandoned 20-acre tract of land (Tract). Harris County Clerk Land Records document that Virgil C. McGinnes Trustee, is this Tract's current owner of record. This Tract is bounded on the south by Interstate Highway 10, on the east by the San Jacinto River main channel, and on the north and west by shallow water off the River's main channel. Virgil C. McGinnes is deceased.

## Site Map

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## Wastes And Volumes

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The primary hazardous substances documented at the Site are polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans. Dioxin concentrations as high as 41,300 parts per trillion have been found in soil and sediment samples collected from the Tract's disposal pit areas and from river sediments near the Tract. Sediments contaminated with high levels of dioxin have been found in the San Jacinto River both up-river and down-river from the Tract. The complete nature and extent of the contamination will be delineated during the Remedial Investigation.

## Health Considerations

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The primary hazardous substances that have been documented at the San Jacinto River Waste Pits site are polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans. Samples collected in the disposal pits and in the San Jacinto River have dioxin concentrations as high as 41,300 parts per trillion. Fish tissue samples have been collected by the Texas Department of Fish and Wildlife, and dioxin has been found in both fish and crab tissue samples above a health based benchmark.

Sediment, water, and tissue samples collected in the vicinity of the impoundments show elevated levels of dioxins. A consumption advisory based on dioxin is in place on this segment of the watershed. The current advisory recommends that adults eat no more than one meal per month caught from the advisory area, and suggests that women of childbearing age and children not consume any blue crabs or fish from the advisory area.

## Record of Decision

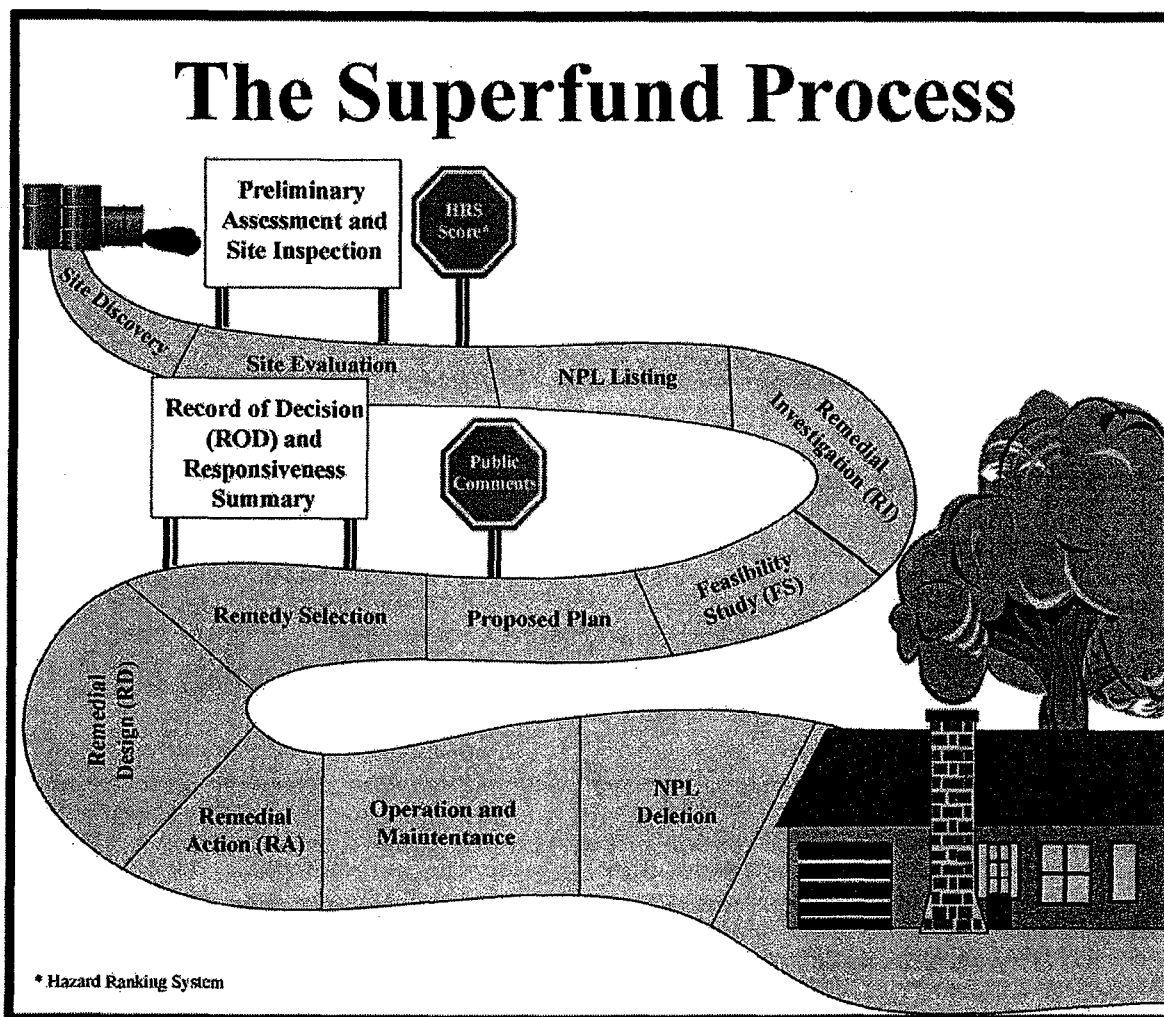
A Record of Decision will be completed during the Remedy Selection.

## Operations and Maintenance

Operations and Maintenance activities will be completed after the Remedial Action.

## Community Involvement

A formal meeting to solicit public input will be held during the Proposed Plan.



## Site Contacts

EPA Remedial Project Manager:	Stephen Tzhone	(214) 665-8409
EPA Site Attorney:	Barbara Nann	(214) 665-2157
EPA Regional Public Liaison:	Donn Walters	(214) 665-6483
TCEQ Project Manager:	Luda Voskov	(512) 239-6368

Site Information Repository:	Pasadena Public Library 1201 Jeff Ginn Memorial Dr. Pasadena, TX 77506	(713) 477-0276
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EPA Toll Free Region 6 Superfund Information Line:	(800) 533-3508
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EPA Region 6 Freedom of Information Act Online Request Form:  
<http://www.epa.gov/region6/6md/foia/foiaform.htm>

EPA Region 6 Contact Us Online Request Form:  
<http://www.epa.gov/region6/r6coment.htm>

## ACCESS AGREEMENT

This Access Agreement ("Agreement") is made and entered into as of the \_\_\_\_ day of December, 2009 by and among McGinnes Industrial Maintenance Corporation and International Paper Company (collectively, the "Grantees"), and Gary Gladfelter, Tanya Gladfelter Ammons, Dolores Jean McGinnes, Tammy Kim McGinnes Idoux, and Holly Dawn McGinnes Boate (collectively, the "Owners").

### RECITALS

**WHEREAS**, Owners own certain property located at the intersection of Interstate Highway 10 and the San Jacinto River, east of the City of Houston, and more particularly described on Exhibit A attached hereto and incorporated herein (the "Property").

**WHEREAS**, the U.S. Environmental Protection Agency ("EPA") issued a Unilateral Administrative Order ("UAO") to Grantees for Remedial Investigation/Feasibility Study ("RI/FS") regarding the Property on November 20, 2009.

**WHEREAS**, EPA also issued to Grantees a proposed Administrative Order on Consent ("AOC") on November 20, 2009 requiring Grantees to conduct a short-term removal action to stabilize the Property.

**WHEREAS**, Grantees and EPA desire access, and the Owners desire to allow Grantees and EPA and their employees, contractors, representatives and agents access to the Property pursuant to the terms and conditions set forth below as a means of implementing the Environmental Work, as defined herein.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants contained herein, the parties hereto agree as follows:

1. Owners do hereby give and grant Grantees and their consultants, contractors, agents, and employees, as well as the authorized representatives of the EPA and its contractors and oversight officials, the right to enter upon the Property for the purposes of performing environmental investigations and other response activities at the Property (collectively referred to as "Environmental Work") that are approved by EPA in accordance with the UAO, AOC, and other orders entered into between the Grantees and EPA.

2. At all reasonable times, EPA and its authorized representatives shall have the authority to enter and freely move about the Property for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Property or Grantees and their contractor(s) pursuant to the UAO; reviewing the progress of the Grantees in carrying out the terms of the UAO; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by Grantees. All parties with access to the Property under this paragraph shall comply with all approved health and safety plans.



3. Owners shall take into account the Environmental Work in Owners' use of the Property, and avoid unreasonable interference with the same. Owners shall not relocate, disturb, damage, or interfere with the wells, equipment or other fixtures or personalty used in the Environmental Work without obtaining Grantees' or EPA's prior written consent. Owners shall be responsible for any cost or expense to abandon, relocate, repair, modify, or replace such wells, equipment, or other fixtures or personalty resulting from the acts, omissions, or requests of Owners or Owners' tenants, contractors, licensees, invitees, or employees (exclusive of Grantees or EPA).
4. This Agreement shall terminate ninety (90) days after the date the EPA issues written evidence that no further investigation, remediation or monitoring is necessary at the Property.
5. Grantees are not EPA's representatives with respect to liability associated with Property activities.
6. The Owners agree to indemnify, defend and hold Grantees harmless from and against any claims, liabilities, damages, losses, costs, suits, expenses, demands, judgments, fines, penalties, or causes of action (collectively "Claims", individually "Claim") suffered or incurred by Grantees arising out of a Claim made, or action or proceeding initiated, by a third party, against Grantees wherein such Claim(s) are in relation to any entry, use of, or activity conducted by the Owners or its employees, contractors, representatives and agents on, under or adjacent to the Property.
7. Notwithstanding anything contained herein to the contrary, in no event shall this Agreement be deemed to create an obligation of Grantees to Owners to perform any of the Environmental Work.
8. No provision of this Agreement nor any action under or by reason of this Agreement shall in any action, proceeding or litigation operate or be construed as an admission by any party of any violation of law or regulation, any liability, fault, or past or present wrongdoing, or any breach of duty at any time.
9. Nothing in this Agreement shall waive or prejudice any right, claim, cause of action or defenses that any party may otherwise have under the law.
10. If any provision of this Agreement is held to be invalid or unenforceable, that provision may be severed and the remaining provisions shall remain in full force and effect.
11. Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts as reasonably necessary or appropriate to perform the material terms, provisions, and conditions of this Agreement and all transactions contemplated by this Agreement.
12. This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document and each signed counterpart shall be deemed an

original hereof. Faxed or e-mailed "portable document file" (i.e., pdf) signature shall be of the same force and effect as original signatures.

13. Any notice required to be provided hereunder shall be in writing and shall be deemed given when hand-delivered, sent postage prepaid by registered or certified mail, return receipt requested, or by e-mail, to the parties for whom the notice is intended at the mailing and email addresses appearing on the signature page of this Agreement. Any party may by written notice change the address to which notices may be sent.

14. This Agreement may be modified only by the written subsequent agreement of the parties.

15. The provisions and covenants contained herein shall inure to, and be binding upon the successors and permitted assignees of the parties hereto. Owners may assign their respective rights, privileges, duties and obligations hereunder with written notice to Grantees. Nothing herein shall be construed to restrict in any manner Owners' rights to sell, pledge or alienate the Property. Owners shall cause any party who acquires or leases the Property from Owners to enter into an Agreement with Grantees in form and substance substantially similar to this Agreement, or shall assign its rights, duties, privileges and obligations under this Agreement to such acquiror or tenant of the Property.

16. This Agreement supersedes all previous agreements between the parties and constitutes the entire understanding of the parties relative to the subject matter hereof.

17. All notifications made pursuant to this Access Agreement shall be directed:

**as to Owners:**

Gary Gladfelter  
169 Castle Breeze Drive  
Seguin, Texas 78155

Tanya Gladfelter Ammons  
218 Dogwood Street  
Lake Jackson, Texas 77566

Dolores Jean McGinnes  
413 Fieldcreek Dr.  
Friendswood, Texas 77546

Tammy Kim McGinnes Idoux  
1509 Pine Forest Dr.  
Pearland, Texas 77581

Holly Dawn McGinnes Boate  
2640 Newcastle Drive  
Carrollton, Texas 75007-1944

**as to Grantees:** Waste Management  
1000 Parkwood Circle, Suite 700  
Atlanta, Georgia 30339  
Attn: March Smith

International Paper Company  
6400 Poplar Avenue  
Memphis, Tennessee 38197  
Attn: Steve Ginski

with copy to: Winstead PC  
401 Congress Avenue, Suite 2100  
Austin, Texas 78701  
Attn: Albert R. Axe, Jr.

Baker & Hostetler, LLP  
12100 Wilshire Boulevard, 15th Floor  
Los Angeles, California 90025  
Attn: John Cermak

18. This Agreement shall be interpreted and enforced according to the laws of the State of Texas.

19. This Agreement may be executed in multiple originals.

20. Copies of this Agreement shall be provided to EPA by Grantees upon request prior to Grantees' initiation of field activities.

21. The foregoing provisions are agreed to, as evidenced by the signatures of the authorized representatives of or attorneys for each Party as set forth below.

IN TESTIMONY WHEREOF, this instrument is executed effective as of the date first above written.

**GRANTEES**

**McGinnes Industrial Maintenance Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**International Paper Company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**OWNERS**

By: \_\_\_\_\_  
**Gary Gladfelter**

By: \_\_\_\_\_  
**Tanya Gladfelter Ammons**

By: \_\_\_\_\_  
**Dolores Jean McGinnes**

By: \_\_\_\_\_  
**Tammy Kim McGinnes Idoux**

By: \_\_\_\_\_  
**Holly Dawn McGinnes Boate**

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THE STATE OF TEXAS  
COUNTY OF HARRIS

Know All Men by These Presents:

THAT, The undersigned

VIRGILL C. MCGINNIS, TRUSTEE

MORTGAGE RECORDS

Vol 5275 pg 514  
036-21-0556

of the County of Harris, and State of Texas, herein styled parties of the first part, in consideration of the sum of TEN DOLLARS paid by party of the second part, hereinafter named, the receipt and sufficiency whereof is hereby acknowledged, and of the further consideration, uses, purposes, and trusts herein set forth and declared, have Granted, Bargained and Sold, and by these presents do Grant, Bargain, Sell, Alien, Convey and Confirm unto O. F. HORN, as Trustee, party of the second part, and also to the Substitute Trustee, as hereinafter provided, all of the following described real estate:

Twenty (20) acres of land out of that certain 190.8 acre tract, in the J. T. Harrell Survey, Abstract 330, Harris County, Texas, and which 190.8 acre tract was conveyed by Edward Shields, et ux, to M. Michael Gordon, et al, by deed dated November 15, 1943, and recorded in Volume 1297, Page 16, of the Deed Records of Harris County, Texas, and which Twenty (20) acre tract is more particularly described as follows:

BEGINNING at a stake on the North Edge of Market Street Road right of way at the Southeast corner of the G. M. Farmer 80 Acre Tract and the Southwest corner of the said 190.8 acre tract;

THENCE North along the East line of said G. M. Farmer 80 Acre Tract to a 3/4" iron pipe set in the Northerly right of way line of State Highway No. 73, at 377 feet,

THENCE with a curve to the right along said right of way line, with a central angle of  $21^{\circ} 12'$ , and a radius of 1910 feet, a distance of 706.67 feet to end of curve;

THENCE South  $62^{\circ} 55'$  East with said Northerly right of way line 931.17 feet to an iron pipe and the PLACE OF BEGINNING of the herein described Twenty (20) acre tract;

THENCE North  $27^{\circ} 05'$  East 740.5 feet to an iron pipe for corner;

THENCE South  $62^{\circ} 55'$  East 1425.75 feet to an iron pipe set in the West Bank of the San Jacinto River;

THENCE Southerly with the meanders of the West Bank of the San Jacinto River, South  $45^{\circ} 55'$  West 81.85 feet;

THENCE South  $64^{\circ} 04'$  West 830.02 feet to an iron pipe set in the Northerly right of way line of State Highway No. 73.

THENCE North  $62^{\circ} 55'$  West with the Northerly right of way line of State Highway No. 73, 900 feet to the PLACE OF BEGINNING.

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MORTGAGE RECORDS

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036-21-0557

Together with all improvements now on, or hereafter placed thereon, and all rights and appurtenances thereto in anywise belonging, and any after acquired title.

TO HAVE AND TO HOLD the said premises unto the said party of the second part, and to his successors and assigns forever; the undersigned hereby covenanting and agreeing to FOREVER WARRANT AND DEFEND the premises aforesaid, and every part thereof, unto the said Trustee hereinbefore named, and to the Substitute Trustee, and to the assigns of any Trustee hereunder, against all persons whatsoever, lawfully claiming or to claim the same or any part thereof, for and upon

the following trusts, terms and conditions, to-wit: That, whereas, said parties of the first part are jointly indebted to

2. ✓ M. MICHAEL GORDON and FRANK F. SPATA

party of the third part herein, as evidenced by One (1) certain promissory note, of even date herewith, executed by the said parties of the first part, and payable to the order of the said party of the third part in Houston, Harris County, Texas, as follows: Promissory note in the principal sum of \$40,000.00 payable to the order of M. MICHAEL GORDON and FRANK F. SPATA, in Houston, Harris County, Texas, as follows: In quarter-annual installments of ONE THOUSAND (\$1,000.00) DOLLARS each, plus the interest accrued on the unpaid balance at the rate of six (6%) per cent per annum the first of each quarter-annual installments of principal and interest to become due and payable on the 1st day of November, 1965 A.D. and a like installment of principal and interest to become due and payable on the 1st day each and every succeeding calendar months of February, May, August and November thereafter until the full amount of such note, principal and interest, is paid; the whole of such note, if not sooner paid, being due and payable on or before August 1, 1972 A.D.;

Said note is executed without the personal liability on the part of Virgil C. McGinnis.

And this conveyance is made for the security and enforcement of the payment of said indebtedness.

Now, should the parties of the first part make prompt payment of said indebtedness, both principal and interest, as the same shall become due and payable, then this conveyance shall become null and void and of no further force or effect, and shall be released by the holder of said indebtedness, at the cost of said parties of the first part. But should parties of the first part make default in the punctual payment of said indebtedness, or any part thereof, principal or interest, as the same shall become due and payable, or fail to keep all taxes and assessments paid before they become delinquent on said property and on this mortgage, and on the notes hereby secured, which tax payments on this mortgage and the notes hereby secured, with the interest payments, are not to exceed ten percent per annum on the principal amount of said indebtedness; or fail to keep the improvements on said property insured against fire, and extended coverage in favor of any holder of the indebtedness hereby secured (who shall hold policies of insurance and certificates showing payment of taxes) in the full insurable value of such improvements, or fail to comply with any of the terms, conditions, provisions or stipulations contained in this deed of trust, then, and in any such case, the whole amount of said indebtedness remaining unpaid shall at the option of the party of the third part, or other holder thereof, immediately mature and become payable, and it shall thereupon, or at any time thereafter, the same or any part thereof remaining unpaid, be the duty of the said party of the third part, and of his successor or substitute, as hereinafter provided, on the request of the said party of the third part, or other holder of the indebtedness hereby secured, or any part thereof, (which request is hereby presumed), to enforce this Trust; and after advertising the time, place and terms of the sale of all of the above conveyed and described property for at least twenty-two days successively next before the day of sale, by posting up or causing to be posted up written or printed notices thereof at three public places in such county where said real estate is situated, one of which shall be at the Court House door of such county, which notices may be posted by the Trustee acting or by any other person, to sell the same in accordance with such advertisement, at public auction, in front of the door of the Court House of such county where such real estate is situated, in the State of Texas, on the first Tuesday in any month, between the hours of 10 o'clock a. m. and 4 o'clock p. m., to the highest bidder for cash—selling all the property above conveyed as an entirety or in parcels, as the Trustee acting may elect—and make due conveyance to the purchaser or purchasers, with general warranty, binding the said parties of the first part herein, and their heirs and assigns; and out of the moneys arising from such sale, the Trustee acting shall pay, first, all the expenses of advertising, sale and conveyance, including a commission of five per cent to himself; and then to the said party of the third part, or any other holder hereof, the full amount of principal, interest and attorney's fees due and unpaid on said indebtedness as hereinafter set forth rendering the balance of the purchase money, if any, to the said parties of the first part, their heirs and assigns; and said sale shall forever be a perpetual bar against the said parties of the first part, their heirs and assigns.

It is expressly agreed that the recitals in the conveyance to the purchaser shall be full evidence of the truth of the matters therein stated, and all prerequisites of said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the parties of the first part herein, their heirs and assigns, whether such prerequisites shall have been performed or shall not have been performed. In case of the absence, death, inability, refusal or failure of the Trustee herein named to act, a successor and substitute may be named, constituted and appointed by the said party of the third part herein, or other holder of said indebtedness, or any part thereof, without other formality than an appointment and designation in writing; and this conveyance shall vest in him as Trustee, the estate and title in all said premises, and he shall thereupon hold, possess and exercise all the title, rights, powers and duties herein conferred on said Trustee named, and his conveyance to the purchaser shall be equally valid and effective; and such right to appoint a successor or Substitute Trustee shall exist as often as, and whenever from any of said causes, any Trustee, original or substitute, can not or will not act. The party of the third part, or other holder of the indebtedness, shall have the right to purchase at such sale, being the highest bidder. The right of sale hereunder shall not be exhausted by one or any sale, but the Trustee or Substitute Trustee may make other and successive sales until all of the property subject to this deed of trust be legally sold.

It is further expressly stipulated and understood that the lien hereby created shall take precedence over and be a prior lien to any other lien of any character, whether materialman's or mechanic's lien, hereafter incurred on the property herein described.

It is further agreed and stipulated that the security herein and hereby provided shall not affect, nor be affected by, any other or further security taken or to be taken for the same indebtedness, or any part thereof.

In event of any default by parties of the first part in any of the terms, conditions, covenants and stipulations herein contained under if the hereinbefore described property becomes vacant, then and in that event the holder of said indebtedness or his agent or the Trustee herein, or the Substitute Trustee hereinbefore provided for, may (at the request of the holder of the whole or any part of the indebtedness hereby secured, which request is hereby presumed) take possession of said property and rent same for such rental as he deems proper, and any moneys actually collected as rental less any proper and reasonable cost and expense of collection shall be applied as a credit on the indebtedness hereby secured, and as further security for the payment of the indebtedness hereby secured, parties of the first part covenant and agree that the holder or holders of the indebtedness secured hereby shall have and are hereby given an express lien on the rents and income of the property herein conveyed, and first parties do hereby assign and transfer said rents and income to the holder or holders of said indebtedness, and authorize the Trustee or the holder or holders of said indebtedness herein, in the event of any default by first parties in any of the terms, conditions, covenants and stipulations herein contained, to collect and use the rents, income and revenue and apply the same as a credit on the indebtedness hereby secured, nothing herein to affect or impair any right of foreclosure, which is hereby expressly reserved. Provided, however, that neither said Trustee or the holder or holders of said indebtedness shall be required to collect any such rent or income or be liable or chargeable for failure to do so.

All moneys actually collected from fire and extended coverage insurance policies on the improvements on the hereinbefore described real property shall be applied as a credit on the indebtedness hereby secured, at the option of the holder or holders of said indebtedness.

In the event that any other or further improvements than those now situated upon the above described property, or which are herein and hereby contemplated to be placed thereon, are erected or attempted to be erected upon the above described property, or in the event that any mechanic, laborer, or materialman, file, or attempt to file, or attempt to claim, any lien on the above described property, then, and in that event, the principal, interest and attorney's fees on the indebtedness hereby secured shall, at the option of the holder or owner thereof, immediately become due and payable by said parties of the first part.

Any holder of any part of the indebtedness hereby secured shall have the option of paying taxes and insurance hereunder and in such event the same so expended shall operate as a lien on the real property herein described and be secured hereby. And any amount so advanced shall be payable on demand and bear interest at the rate of 10 per cent per annum.

036-21-0559

It is expressly stipulated and agreed that parties of the first part shall keep and maintain buildings and improvements on said land in a good state of repair and will not attempt to alter, tear down, or remove the same, or any part thereof, or permit same, or any part thereof, to be altered, torn down, or removed from said premises without the written consent of the holder of the indebtedness hereby secured. A failure to keep and perform this covenant or agreement, or if it should be discovered after the execution and delivery of this instrument, that there is a defect in the title of the parties of the first part to the property herein conveyed, or that there is a lien of any nature whatsoever on the same, or any part thereof, equal or superior in rank to the lien of this instrument, or if a homestead claim is set up to the same, or any part thereof, adverse to this trust, and parties of the first part fail for fifteen (15) days after demand by the Trustee, or by the holder of said indebtedness or any part thereof to correct the defect in such title, or perfect the same, or remove said lien, or homestead claim, or if parties of the first part become insolvent or bankrupt, or make any assignment for benefit of creditors, or a receiver of their property be appointed, then any such default, failure or contingency, shall, at the option of the holder, mature the entire indebtedness hereby secured, and authorize foreclosure by Trustee's sale or otherwise, and the Trustee, or Substitute Trustee, or any holder of the indebtedness hereby secured, or any part thereof, is authorized to prevent any breach of said covenant or agreement, or any part thereof, by injunction or otherwise, at the expense of first parties.

Parties of the first part hereby expressly covenant, warrant and represent that they have never lived upon, used or claimed, and that they do not now live upon, use or claim, and that they have no present intention of ever living upon, using or claiming, any part, or all, of the hereinbefore described property, premises and improvements, or any part thereof, as their residence or business homestead, and they do hereby expressly waive, renounce, and release any and all homestead rights, claims and other exemptions in and to the hereinbefore described property, premises and improvements, which they have, or may be entitled to, in and to said described property, premises and improvements, under and by virtue of the laws and constitution of the State of Texas, and party of the first part hereby designates and sets apart as the only homestead to which they are entitled the property which they are now occupying, described as follows:

It is further agreed that any and all renewals, rearrangements and/or extensions may be made of the time of payment of all or any part or parts of the indebtedness secured hereby, or any part of the security herein described may be released, without in anywise altering, varying, or diminishing, the force, effect or lien of this instrument, or of the renewal or extension of it, and this instrument shall continue as a first lien on all said lands and premises not expressly released until all sums, with interest and charges, hereby secured, are fully paid.

It is further agreed that this instrument shall be and remain in full force and effect to secure the payment of any and all indebtedness of first parties to third party hereinafter incurred, however the same may accrue.

It is further agreed that in the event of a foreclosure under the power granted hereby, the owner in possession of said property shall thereupon become the tenant at will of the purchaser at such foreclosure sale, and should such tenant refuse to surrender possession of said property upon demand, the purchaser shall thereupon be entitled to institute and maintain the statutory action for forcible detainer, and procure a writ of possession thereunder.

In the event any portion of the indebtedness evidenced by the above described notes is not, for any reason, secured by this deed of trust on the above described property, it is expressly stipulated, provided and agreed that the full amount of all payments hereafter made upon said notes shall be first applied to such unsecured portions of said indebtedness until the same has been fully paid.

The promissory note, herein described and secured hereby, is the same note set forth and described in deed, of even date, from Beneficiaries herein to the Grantee herein, and in which deed the Vendor's Lien was retained, and Superior Title reserved to secure its payment. The taking of this Deed of Trust is not in lieu of such Vendor's Lien and Superior Title, but is additional thereto, and cumulative thereof, and a foreclosure under the powers herein granted will operate also to foreclose such Vendor's Lien.

When this Deed of Trust is executed by only one person as party of the First Part, it shall be construed as if parties of the first part were written party of the first part, and words in their number were changed to correspond.

EXECUTED at Houston, in Harris County, Texas, on this 3 day of AUGUST, A. D. 1965.

*Virgil C. McGinnis, Trustee*  
Virgil C. McGinnis, Trustee